
(1995) 09 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 169 of 1995

Eastern India Breweries (P) Ltd. and Another	APPELLANT
Vs	
The Bihar State Financial Corporation and Others	RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Bihar State Financial Corporations Act, 1951 — Section 29, 9

Citation : (1996) 2 PLJR 676

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Mishra, J.—Initially, the instant writ application was filed by the Petitioners for quashing of the letter, dated 9.12.94 whereby the Petitioners had been communicated the decision of the Respondent, the Bihar State Financial Corporation (hereinafter called "the Corporation") to take physical possession of the mortgaged assets of the Petitioners' Unit u/s 9 of the Bihar State Financial Corporation Act, 1951 (hereinafter referred to as "the Act") for recovery of the dues of the Corporation. It was further prayed for restraining the Respondent Corporation from dispossessing the Petitioners from their Unit. Petitioner No. 1 is a Company registered under the Indian Companies Act, 1956, which is also registered as Small Scale Industrial Unit with the Directorate of Industries, Government of Bihar. Petitioner No. 2 is an educated unemployed person at the relevant time and is one of the Board-of-Directors of the Petitioners' Unit. Since there was no Brewery for the manufacture of Beer in the State of Bihar, the Petitioners established the Unit for production of Beer for which they obtained term loan from the Respondent Corporation to the tune of Rs. 18.08 lacs. However, the Corporation paid Rs. 11.50 lacs out of which a sum of Rs. 6.58 lacs was adjusted. The Petitioners, however, managed their own fund and started production in and around the year, 1981, and the brand was named "Lords", which was marketed within and outside the State. In order to increase the

production and improve the capacity of utilisation, it was thought desirable to shift the unit to some bigger and suitable premises. At this stage, the Respondent Corporation in purported exercise of its power u/s 29 of the Act advertised for sale the mortgaged assets of one M/s Orient Beverages Ltd., which had a plant and machinery similar to that of the Petitioners. Since the said M/s Orient Beverages Ltd. was found to be suitable by the Petitioners, they filed tenders for purchasing the said mortgaged assets after complying with the advertisement published by the Respondent Corporation, which was ultimately accepted but unfortunately, the sale was not finalised due to the filing of a writ application on behalf of M/s Orient Beverages Ltd. being C.W.J.C. No. 368 of 1982 in the Calcutta High Court. The Respondent Corporation, no doubt, conceded to the claim of the Petitioners, but expressed its inability because of the stay order obtained by M/s Orient Beverages Ltd. from the Calcutta High Court in the aforesaid writ application, which, however, was ultimately dismissed on 30.9.1982. Accordingly, the Petitioners filed a representation before the Respondent Corporation for finalising, the sale of the said Unit in their favour. The Board-of-Directors vide its Resolution, dated 15.12.1982, authorised the Managing Director of the Corporation to take over possession of the Unit of M/s Orient Beverages Ltd. u/s 9 of the Act so that the same be handed over to the Petitioners. It was further resolved that the mortgaged assets of M/s Orient Beverages Ltd. be and is hereby sold to the Petitioners" Unit M/s Eastern India Breweries Pvt. Ltd. on the terms and conditions as stipulated therein. A copy of the Resolution of the Board of Directors is made Annexure-2 to this writ application. Unfortunately, in spite of the direction of the Board of Directors, the Managing Director did not take over the possession of the said Unit. However, the Respondent Managing Director had issued a letter to the Petitioners on 28.12.1982 to the effect that the Board of Directors had transferred the mortgaged assets of M/s Orient Beverages Ltd. to the Petitioners M/s Eastern India Breweries (P) Ltd. and the Petitioners accepted the transfer unconditionally along with a sum of Rs. 2.40 lacs being the first installment of the cash down payment. A copy of the said letter is made Annexure-3 to this writ application. The Petitioners communicated their unconditional acceptance of the transfer of the assets of M/s Orient Beverages Ltd. in terms of the letter aforesaid and, accordingly, the Petitioners paid a sum of Rs. 2.40 lacs as directed by the Respondent Managing Director being the first installment of the cash down payment. The total amount paid by the Petitioners in this behalf was Rs. 2.50 lacs (Rs. 2.40 lacs being the first installment plus Rs. 10,000/- being the earnest money), which was duly accepted by the Respondent Corporation. However, in spite of the aforesaid payment having been accepted by the Corporation, the possession of the Unit M/s Orient Beverages Ltd. was not handed over to the Petitioners in spite of the best efforts having been made by the Petitioners. However, the Petitioners were told that in terms of the decision of the Board, the mortgaged assets of M/s Orient Beverages Ltd. had been transferred to them for shifting their Breweries to the site of M/s Orient Beverages Ltd. and, accordingly, they dismantled the plant and machineries of the said Beverages for the purpose

of shifting and in terms of the aforesaid direction, the Petitioners started dismantling the plant and machineries of their own unit and the intimation thereof was sent to the Respondent Corporation through their letter dated 10.1.1983 with a further request for allowing the Petitioner's to take over possession and for executing the sale-deed for the said Unit. A copy of the said letter is made Annexure-4 to this writ application. Even though the Petitioners had dismantled a substantial portion of their plant and machineries, neither possession was handed over nor the sale deed was executed by the Respondent Corporation. Ultimately, the Petitioners had to file a writ application for a direction to the Respondent Corporation for implementation of the Board's Resolution aforesaid and also for execution of the document wherein the Respondent Corporation accepted and supported the stand of the Petitioners to the extent that the Corporation had not taken any decision contrary to the decision taken by the Board of Directors on 15.12.1982 nor it was, in any way, intending to deviate from the aforesaid Resolution of the Board. M/s Orient Beverages Ltd. filed Anr. writ application before this Court being C.W.J.C. No. 1251 of 1983 for setting aside the sale of their Unit in favour of the Petitioners. Having regard to the stand taken by the Corporation in the writ application filed by the Petitioners, and without doubting their intention, the Petitioners withdrew the said writ application in the hope that the Respondent Corporation will abide by its assurance given to the Petitioners. The writ application filed by M/s Orient Beverages Ltd. was ultimately dismissed by Order, dated 25.3.1983. The Petitioners once again, after dismissal of the writ application filed by M/s Orient Beverages Ltd. requested the Corporation to hand over possession of the Unit in question, but because of the delaying tactics of the Respondent Corporation, and for the reasons best known to the Respondent-Corporation, the same could not be handed over to the Petitioners, probably in order to allow M/s Orient Beverages Ltd. to move the Hon'ble Supreme Court, so that they might obtain some interim order. After having deposited the entire dues of the Respondent-Corporation M/s Orient Beverage Ltd. the Supreme Court in the SLP passed an order of status quo on 30.3.1983. It was held in the said Special Leave Petition, the Supreme Court of India has passed the following Order on 12.4.83:

Pending hearing and final disposal of the appeal there will be stay of dispossession. The Bihar State Financial Corporation will be at liberty to withdraw from the Registrar of this Court, the draft in the sum of Rs. 13.75 lakhs deposited by the Appellant in the Court. The payment will be without prejudice to the rights and contentions of the various parties in this appeal. The Bihar State Financial Corporation may not refund the amount paid by Mr. Kacher's Client Respondents 5 to 7 but at the same time, it will also not make any fresh demand for the balance or interest which is due. The equities between the parties will be decided when the appeal is taken up for hearing.

The said order of the Supreme Court is made Annexure-5 to this writ application. Although, the entire amount deposited by M/s Orient Beverages Ltd. had been withdrawn by the Respondent Corporation from the Supreme Court, yet the

Respondent Corporation unfortunately did not return the amount of Rs. 2.50 Lakhs to the Petitioners paid by them to the Respondent Corporation for purchase of the Unit of M/s Orient Beverages Ltd. as stated above. The said SLP was finally heard by the Supreme Court on 4.10.94 and the following orders were passed:

On March 30, 1983, this Court had directed as a condition for grant of stay that the Appellant shall deposit a sum of Rs. 13.75 lakhs with the Registrar of this Court during the course of the day and Registrar was directed to accept the Bank Drafts which according to the counsel was made in favour of the Bihar State Financial Corporation. According to the direction given by this Court, the Appellant had deposited the amount. When the matter again had come up on April 12, 1983, however, while granting leave, this Court passed the following order:

Pending hearing and final disposal of the appeal, there will be stay of dispossession. The Bihar State Financial Corporation will be at liberty to withdraw from the Registrar of this Court, the draft in the sum of Rs. 13.75 lakhs deposited by the Appellants in the Court. The payment will be without prejudice to the rights and contentions of the various parties in this appeal. The Bihar State Financial Corporation may not refund the amount paid by Mr. Kacker's clients, Respondents 5 to 7, but at the same time, it will also not make any fresh demand for the balance or interest which is due. The equities between the parties will be decided when the appeal is taken up for hearing.

It is not in dispute that the amount of Rs. 13.75 lakhs were in full satisfaction and the entire liability of the Appellants had come to be discharged before grant of leave by this Court. In that view of the matter, the proposed sale of the Appellant-Industry, no longer subsists, in as much as the liability has already been discharged.

Before making sale, it would appear that Respondent No. 5 East India Beverages by negotiation entered into an agreement to purchase the Appellant's unit and as a condition deposited a sum of Rs. 2.4 lakhs towards first instalment. This Court, while passing the above order had stated that the amount deposited by the 5th Respondent shall not be refunded but equities would be worked out. Pursuant thereto, 5th Respondent had not made any further deposit. In view of our finding that there is no subsisting liability of the Appellant as on the date of granting leave, namely, April 12, 1983, the Bihar State Financial Corporation is directed to refund to the Respondents a sum of Rs. 2.4 lakhs deposited together with interest @ 16% from the date of the deposit till the date of refund. The appeal is accordingly disposed of. Whatever be the rights and liabilities between the 5th Respondent and the Bihar State Financial Corporation in respect of the loan given to the 5th Respondent towards establishment of East India Beverages, we do not propose to decide though the learned Counsel repeatedly requested for such decision. However, it shall be open to 5th Respondent to work out its rights according to Rules and law.

A copy of the order passed by the Supreme Court is made Annexure-6 of this writ application. Ultimately, the Respondent Corporation issued the impugned letter, dated 9.12.94 to the Petitioners communicating the decisions purported to have been taken u/s 9 of the Act for taking over possession of the Petitioners' Unit. A counter affidavit has been filed on behalf of the Respondent-Corporation, wherein, inter alia, it has been stated that the Corporation sanctioned loan to the Petitioners in 1975, 1981 and 1982 vide Account No. 1 for Rs. 8.38 Lakhs, Account No. 2 for Rs. 3.15 Lakhs and Account No. 3 for Rs. 5.60 Lakhs, which was withdrawn by the Petitioners and the Unit went into production. The Petitioners committed default from the very beginning and the total outstanding dues worked out against the (sic)ers came to the tune of Rs. 139.08 (approximately) up to the 31st 1994. It is further stated that the (sic) to sale M/s Orient Beverages, Ltd. Petitioners is altogether different (sic)tion and, accordingly, the peti(sic) cannot take advantage of the said (sic)on the part of the Corporation for (sic)nding over the same to the peti(sic). However, the statements made by Petitioners in the writ application have been denied in the counter-af(sic) rather they have been accepted as (sic)t nor they have been controverted (sic)rse of arguments by learned Counsel (sic) the Respondent Corporation. It is (sic) alleged that because of the Stay (sic)passed by the Supreme Court on (sic)3, the prayer of the Petitioners for (sic)ig over possession of the Unit of Orient Beverages Ltd. could not be (sic)ed to. This application was placed (sic)mision on 3.2.95 when it was heard he learned Counsel for the Respondent-Corporation was directed to seek in(sic)ions and file counter-affidavit, if any (sic) while, the operation of the order of (sic) Respondent-Corporation, dated (sic)4, as contained, in Annexure-7 to the (sic)it writ application was stayed. When (sic)atter was again placed for admission(sic)3.95, Mr. Sunil Kumar, learned Counsel the Petitioners informed the Court after the interim order was passed by (sic)Court, on 29.3.95, the Petitioners' (sic)sel was called upon by the respon(sic) Managing Director and asked him to (sic)it a fresh proposal for consideration (sic)he matter. Accordingly, a fresh (sic)osal was submitted and prayer was (sic) for a direction to the Respondent (sic)aging Director to take final decision in (sic)matter. The Respondent Managing (sic)tor was, accordingly, directed to take (sic) decision in terms of the fresh proposal within the time mentioned in Annexure-8 to this writ application, which read as follows:

February 20, 1995. To The Managing Director, Bihar State Financial Corporation, Fraser Road, Patna.

WITHOUT PREJUDICE TO OUR RIGHT AND CONTENTION IN C.W.J.C. No. 169/95 BEFORE HON'BLE PATNA HIGH COURT.

Dear Sir, Sub: Repaymet of dues of the B.S.F.C.

Please refer to the discussions undersinged had with you regarding the captioned subject.

We have already forwarded you the order of Hon''ble Supreme Court of India in Civil Appeal No. 3976 of 1983. In this connection we have requested to refund Rs. 2.40 lacs deposited by us as down payment for purchase of M/s Orient Beverages Ltd. and Rs. 10,000/- tender amount paid in the above unit along with interest @ 16% per annum as directed by the Hon''ble Supreme Court of India. The same has not been refunded by you.

In the above order of the Hon''ble Supreme Court we were also directed to work our rights and claims according to rules and law. We have to state as follows:

1. M/s Orient Beverages Ltd. was sold to us in agreed terms with you of shifting our factory from Kankerbagh to the premises of M/s Orient Beverages Ltd. at Industrial Area, Patna. As advised we started dismantling our unit in process to shift about which due intimation was given to you with a request to hand over the possession of M/s Orient Beverages Ltd., to us. The possession of unit was not handed over in spite of the fact that the Board of Directors of the Corporation had passed resolution to that extent. In this background M/s Orient Beverages Ltd. obtained a stay order of dispossession from the Hon''ble Supreme Court.

2. That for the last 11 years our unit was closed and it is only on October 4, 1994 the Hon''ble Supreme Court decided the case which is known to you.

We were left in a precarious position where we had dismantled our unit and the Corporation did not effectuate the sale of M/s Orient Beverages Ltd. to us. The case was pending before the Supreme Court of India for around eleven years. The Corporation received payment of its total outstanding from M/s Orient Beverages Ltd. and it also retained the rupees 2.50 lacs paid by us for the purchase of M/s Orient Beverages Ltd.

We were the bonafide purchasers of a unit which the Corporation had advertised for sale and also passed a resolution for transferring the unit to us which could not be effectuated. The sale was decided in our favour for the specific purpose of shifting our existing unit at Kankerbagh to the site of M/s Orient Beverages Ltd. Apart, from the damages suffered by us we have suffered immense opportunity for those eleven years.

In the circumstances we have to submit as follows:

(a) We shall pay to the Corporation its total outstanding as on the date of Board of Directors passed the resolving transferring the mortgaged assets to us, which ultimately the Corporation could not do.

(b) The entire interest for the period after the date of the resolution of the Board of Directors as aforesaid be waived.

(c) We should be allowed to sell the land and building of the unit which has been mortgaged to the Corporation to enable us to liquidate the dues of the Corporation.

(d) We should be allowed to shift the Plant and Machinery to a new site and the

Corporation should give us financial assistance by way of term loan etc. for restoring the unit.

Sir, we are very anxious to settle the matter and restore the Unit immediately.

We solicit an early reply from you.

Yours faithfully for Eastern India Breweries (P) Ltd. Sd/- Illegible. Prabhat Kumar
Managing Director.

The Respondent Managing Director, however, has passed an order, dated 10.4.95 by which he has rejected the fresh proposal submitted by the Petitioners in terms of Annexure-8, as quoted above. A copy of the said order, dated 10.4.95 is made Annexure-9 to this application.

2. In course of hearing, Mr. Sunil Kumar, learned Counsel appearing on behalf of the Petitioners, has confined his argument only with respect to the payment, of interest for the period from 15.12.82 to 4.10.94. He has, however, submitted that the Petitioners are ready to pay the principal loan amount as well as the interest accrued thereon upto 14.12.82, to the Respondent Corporation namely, for the period ending on the date on which the decision was taken by the Board of Directors of the Respondent Corporation. In support of the aforesaid limited prayer, Mr. Kumar, learned Counsel for the Petitioners submits that the Respondent Corporation having failed to materialise the sale of the Unit in question in favour of the Petitioners, the Respondent-Corporation cannot saddle the Petitioners with the interest for the aforesaid period, namely, from 15.12.82 to 4.10.94.

3. In opposition to the aforesaid argument, Mr. Shravan Kumar, learned Counsel for the Corporation, has submitted that there is no provision either in the Act and/or the agreement under which the interest can be waived. He has further submitted that there is no laches on the part of the Respondent Corporation in handing over the Unit in question to the Petitioners.

4. From the statements made in the writ application as well as the counter-affidavit filed on behalf of the Respondents, it is amply clear that the sale was finalised in favour of the Petitioners and the Board of Directors took a decision to hand over the possession of the Unit in question to the Petitioners on the terms and conditions mentioned therein which were ultimately complied with by the Petitioners. It is further manifest from the records that on the assurance of the Respondent Corporation to the effect that the Petitioners will be given possession of the aforesaid Unit, the Petitioners dismantled a substantial portion of their Unit for the purpose of shifting of the same to the new site for better production and promoting sale thereof and, therefore, the Petitioners cannot be held responsible, in any event, for not effecting the transaction pursuant to the acceptance of the terms and conditions for the same. The intention of the Petitioners cannot be said to be mala fide and/or towards avoidance of payment of the dues of the Corporation. On the contrary, the stand taken by the Petitioners, while

submitting fresh proposal in terms of Annexure-8 to this writ application will clearly go to show that they are very much agreeable to pay off the dues of the Respondent-Corporation. The genuineness of the prayer of the Petitioners to the extent that they are not liable to pay the interest for the period from 15.12.82 to 4.10.94 has not been seriously disputed by the Respondent Corporation, but only the same has been denied on the ground that there is no provision either in the Act or in the agreement so as to waive the interest accrued on the principal loan amount advanced to the Petitioners by the Respondent Corporation. It is true that there is no equity in favour of the defaulting party, which can justify the interference by this Court in exercise of its extraordinary writ jurisdiction. In this case, however, no question of wilful default on the part of the Petitioners can even be presumed. As stated above, out of Rs. 11.50 Lacs advanced by the Respondent Corporation to the Petitioners, a sum of Rs. 6.50 lacs has already been adjusted by the Respondent Corporation inasmuch as the Petitioners are also ready to pay the balance amount with interest for the period till the date the Board of Directors of the Corporation passed the resolution i.e. 15.12.1982. In the aforesaid background, it cannot be said that the Petitioners have any mala fide intention and/or they wilfully defaulted in payment of the dues of the Respondent Corporation. No doubt, it is true that in terms of the agreement, the properties mortgaged with the Corporation can be sold the moment the party commits a default in payment of the instalments, but at the same time, when the party offers to make payment of the principal loan amount along with the interest, such a drastic action, as purported u/s 29 of the Act, cannot be resorted to. This Court, while exercising its writ jurisdiction not only acts as a Court of law, but it also acts as a Court of equity. By now, it is also well known that the High Court, in exercise of its writ jurisdiction, can issue suitable directions in the interest of justice, as it considers fit and proper.

5. I have heard learned Counsel for the parties and considered the pleadings on their behalf. In the facts and circumstances of this case, I am of the view that the Respondent Corporation is not justified and/or entitled to claim interest for the period from 15.12.82 to 4.10.94, when the Board of Directors had taken a decision to hand over possession of the Unit in question to the Petitioners, the same was ultimately refused by the Respondents. However, it is made clear that the Petitioners are liable to pay the interest till 15.12.1982 to the Corporation along with its due principal amount advanced to the Petitioners. The Petitioners are further directed to pay the principal amount advanced by the Corporation, as it remains due to the Corporation along with the interest from the date of its payment at the rate mentioned in the agreement. This writ application is allowed to the extent indicated above.